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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,339	01/31/2001	Takeshi Sato	FUJR 18.275	5975
26304	7590	11/02/2005		
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER SHINGLES, KRISTIE D	
			ART UNIT 2141	PAPER NUMBER
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/773,339

Applicant(s)

SATO ET AL.

Examiner

Kristie Shingles

Art Unit

2141

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-18.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

KDS/20051019

Continuation of 11. does NOT place the application in condition for allowance because: Applicant asserts that Ginossar fails to teach any threshold associated with the maximum size segment and fails to teach or suggest the limitation of comparing the congestion indicator against the maximum segment size. However, it is the Examiner's position that Ginossar teaches a traffic regulation means, which is inherently related to the segment size of the packets being transmitted and the amount of congestion evident on the network. According to Ginossar, regulation control is based on a congestion indicator that determines the extent of adjustment done to the basic data segment size. The sizing of the basic data segment is determined by the congestion information and is adjusted accordingly in response to the congestion indicator and information (col.9 line 44-col.10 line 30). Under congestion conditions, the router transmits a smaller basic segment size, which informs the transmitting node to reduce its basic segment size to a smaller size, so that the segment sizing is "adaptively related to the state of congestion of the network path". Furthermore as the congestion severity level increases, the "maximum segment size decreases accordingly," wherein the congestion severity level is an indicator relative to the traffic intensity (col.11 line 19-col.15 line 6). Before processing of the data for transmission, a determination of the data segment size is made in comparison with the maximum segment size, and notifications are sent informing the nodes of the maximum allowed data segment size- this in turn controls traffic intensity, the transmission rate on the network and the operation thereof by maintaining the transmission process of smaller data packets and restricting packets exceeding the maximum segment size threshold (col.16 line 3-col.19 line 35).

Furthermore, in regards to Applicant's assertion that Gao fails to teach performing traffic regulation control based on the comparison with the traffic intensity. It is the Examiner's position that Gao et al teach an overload control system responsive to the status indicators comprised in congestion reports. Upon broadcasting the congestion status information in congestion reports, after receiving the status, the processors accordingly regulate the threshold dynamically. The levels of the congestion status include, "below capacity", "near capacity", and "above capacity or overload," wherein congestion status is indicative of traffic intensity determinations (col.3 line 5-col.4 line 65). The broadcasted congestion status indicates whether the congestion status is less, more or equal to the threshold value. If less, then the network system stabilization is maintained for steady operation and transmission, thus no adjustments are necessary and the thresholds are maintained relative to the congestion reports (col.5 line 1-col.6 line 34 and col.7 line 1-col.8 line 48). Therefore, Applicant's arguments are non-persuasive in light of Gao and Ginossar achieving the functionality of the claimed invention.



**RUPAL DHARIA**  
**SUPERVISORY PATENT EXAMINER**